

**STATE OF MAINE  
BOARD OF DIRECTORS OF THE DIRIGO HEALTH AGENCY**

IN RE: REVIEW OF AGGREGATE	)	
MEASURABLE COST SAVINGS	)	
DETERMINED BY DIRIGO HEALTH	)	SUPPLEMENTAL HEARING BRIEF
FOR THE SECOND ASSESSMENT	)	OF THE MAINE ASSOCIATION
YEAR	)	OF HEALTH PLANS

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NOW COMES the Maine Association of Health Plans ("MEAHP") as an intervenor in this hearing regarding the determination of "aggregate measurable cost savings" (AMCS) for the second assessment year pursuant to the Dirigo Health Act, P.L. 2003 ch. 469, as amended by P.L. 2005, ch. 400 (the "Act"), and files this Supplemental Hearing Brief in response to the Supplemental Report to the Dirigo Health Agency authored by Mercer Government Human Services Consulting ("Mercer") and filed with the Board of Directors (the "Board") of the Dirigo Health Agency ("DHA") by DHA on May 2 (the "Report"). MEAHP believes that the Report confirms MEAHP's position that the "Hospital Savings Initiatives" put forward by DHA as sources of AMCS have no legal foundation. MEAHP also wishes to register an early and vigorous objection to DHA's apparent intention to provide updated savings calculations at some time on or after July 15.

**A. The Lack of Data Needed To Calculate DHS's Hospital Savings Initiatives  
Confirms that the Legislature Did Not Intend Them To Be Included in AMCS**

The Report states that Mercer's cost-per-case-mix-adjusted-discharge calculations "are not complete for Year 2." In addition, DHA witness Schramm, who will be sponsoring the Report, states in his May 1 Amended Prefiled Testimony that "the data [for various of DHA's initiatives calculations] is not available for a January 1st start date until well into the

middle of the calendar year." Schramm Amended Prefiled at Lines 240-242.

As argued in Section 2 of MEAHP's Hearing Brief, the Dirigo law limits the AMCS calculation to (a) bad debt and charity care savings generated by DHA's insurance operations, and (b) savings resulting from the expansion of MaineCare. The Report buttresses MEAHP's position that DHA's proposed Hospital Savings Initiatives cannot be included in the AMCS calculation.

The Hospital Savings Initiatives portion of the Report insists that a proper calculation of these Initiatives for Dirigo Year 2 requires the use of certain data - namely the Medicare Cost Reports ("MCRs") - which "will not be available until July, 2006 at the earliest," Report at 2, yet the Legislature insists that the Board make its determination "annually not later than April 1st." 24-A Mr.S.A § 6913(1). Justice Marden noted in his Decision and Order that "the court must presume that the legislature had well in mind the availability of the information to the Board. . . ." *Maine Association of Health Plans, et al. v. Dingo Health Agency*, Kennebec Superior Court, Civil Action Docket No. AP.06.26, April 14, 2006 Decision and Order at 7. Had the Legislature in fact intended to include the Hospital Savings Initiatives in the AMCS calculation, it would have structured the AMCS determination process so that the data now claimed by DHA to be indispensable to developing its Hospital Savings Initiatives savings estimate would be available in time for the Board's yearly April 1 AMCS determination. As the Report indisputably demonstrates, however, this will *never* be the case: the MCRs will never be available in time for an April 1 determination. This compels the conclusion that the Legislature never intended the Hospital Savings Initiatives to be included in the AMCS calculation.

**B. DBA Cannot Be Allowed To Update Its AMCS Calculation.**

The Report candidly states that "the unavailability of data makes it impossible to determine the final savings amount for Year 2 at this time," that all needed data will not be in before July 15, and that the Board can expect an updated savings calculation from DHA in late July. Report at 2-3.

MEAHP would simply note at this point that there is no room in the Dirigo statute for any such update. As Justice Marden has now confirmed, the Board should have made its determination by April 1 of this year, but in any event must make the determination by May 12. The Superintendent of Insurance will then review the Board's determination to assess whether the determination is "reasonably supported by evidence in the record."t Thereafter, this Board's remaining responsibility will be to establish the SOP, which cannot exceed the AMCS as finally established by the Superintendent. There is simply no room in this statutory scheme for the late July updating process contemplated in the Report.

Dated: May 5, 2006

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<sup>1</sup> The Superintendent has already indicated that he does not intend that this year's hearing before him be a de novo review. In Re Review of Aggregate measurable Cost Savings Determined By Dirigo Health For The Second Assessment Year, Docket No. INS-O6-900, Notice of Pending Proceeding and Hearing. April 26, 2006.

## **CERTIFICATE OF SERVICE**

I, D. Michael Frink, attorney for the Maine Association of Health Plans, hereby certify that on this day the foregoing document was served on the following parties:

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